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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,166	03/10/2004	Johan Thevelein	Q80427	3449

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EXAMINER

JOIKE, MICHELE K

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/796,166	Applicant(s) THEVELEIN ET AL.	
	Examiner Michele K. Joike, Ph.D.	Art Unit 1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10,12,14-23,38 and 40-62 is/are pending in the application.
4a) Of the above claim(s) 15-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3-7, 9, 10, 12, 38, 40-56, and 59-62 is/are allowed.
- 6) ☒ Claim(s) 2,14,57 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of a reply to the previous Office Action, filed September 18, 2006. Claims 1, 51 and 57 were amended.

Claims 1-7, 9, 10, 12, 14-23, 38 and 40-62 are pending; claims 1-7, 9, 10, 12, 14, 38 and 40-62 are under consideration in the instant application. Any rejection of record in the previous Office Action, mailed June 16, 2006, that is not addressed in this action has been withdrawn.

Because this Office Action only maintains rejections set forth in the previous Office Action and/or sets forth new rejections that are necessitated by amendment, this Office Action is made FINAL.

Claim Objections

Claim 57 is objected to because of the following informalities: The claim has the wrong status identifier. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 14, 57 and 58 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Response to Arguments Concerning Claim Rejections – 35 USC § 112 (2)

Applicant's arguments filed September 18, 2006 have been fully considered but they are not persuasive.

The following grounds of traversal are presented:

Applicant argues that the term "bad smell" and "bad or abnormal taste" are within common knowledge of the skilled artisan. Yeast Technology is cited in support of desiring a yeast strain that is provided "without affecting product quality." The argument is that bakery product quality refers to organoleptic properties. Therefore, a yeast strain not leading to a bad smell or abnormal taste is a common aspect of yeast strain improvement.

Applicants also argue that the terms "bad taste or off-flavors" are not descriptive of personal preferences and dislikes, but are rather used to refer to characteristics that are alien to the normal product; an example of milk as being "off" is presented by applicants and is determined by the skilled artisan, who knows the taste and smell profiles that are abnormal to consumers as a collective entity.

Applicant's arguments have not been found persuasive for the following reasons:

"Bad smell" and "bad or abnormal taste" are relative terms and a matter of personal preference, so are the terms "bad tastes or off-flavors". While it may be a common aspect of strain improvement to not have a bad smell or abnormal taste, it is not clear what improvement would cause a strain to not have a bad taste or smell, since it would depend on the preferences of the individual. An individual determines

Art Unit: 1636

something to have a bad taste based entirely on his or her personal preference, as many individuals have conflicting views on what has a good or bad taste. For instance, one individual may like the taste of mayonnaise, while another individual may expound that it has a "bad taste". This is also true with regard to the "milk example" provided in the argument above; one individual may not dislike a certain level of bacterial contamination of milk, thereby not considering the milk as "off" while another individual will consider the milk "off" because they are more sensitive to the presence of bacterial contamination. This is indeed a matter of personal preference.

Allowable Subject Matter

Claims 1, 3-7, 9, 10, 12, 38, 40-56, and 59-62 are allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Art Unit: 1636

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele K. Joike, Ph.D. whose telephone number is 571-272-5915. The examiner can normally be reached on M-F, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele K Joike, Ph.D.
Examiner
Art Unit 1636


DAVID GUZO
PRIMARY EXAMINER